



Michael Nilsen <mnilsen@AFPNET.org> on 04/09/2004 02:38:37 PM

To: politicalcommitteestatus@fec.gov  
cc:

Subject: Comments on NPRM regarding Political Committee Status

Attached please find the comments of the Association of Fundraising Professionals regarding the Federal Election Commission's notice of proposed rulemaking on political committee status. Should you have any concerns, questions or comments, please contact me at the address below. Thank you for your consideration.

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April 9, 2004

Mai T. Dinh  
Acting Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

RE: Notice of proposed rulemaking on Political Committee Status

Dear Ms. Dinh:

On behalf of our 24,000 members across the United States, I am pleased to submit the comments of the Association of Fundraising Professionals (AFP) regarding the notice of proposed rulemaking promulgated by the Federal Election Commission (FEC) regarding changes in the definition of “political committee” and “expenditure.”

AFP is a professional membership organization created under Section 501(c)(6) of the Internal Revenue Code. It represents individuals who are responsible for generating philanthropic support for a variety of charitable, nonprofit organizations (generally, but not limited to, 501(c)(3) and (c)(4) organizations). Our members helped to raise the more than \$240 billion in charitable giving in 2002 that went to support thousands of causes related to education, social services, healthcare, the environment, civic engagement and international relief, to name just a few.

However, just as important as providing membership services is an association’s ability to engage in advocacy and public education to assure that appropriate and beneficial public policies are created and maintained. Looking beyond associations, Congress and the Internal Revenue Service have indicated numerous times that a nonprofit’s right to advocate on behalf of the people it serves is critical and fundamental—whether the nonprofit is an association, a charity or some other form of 501(c) entity under the Internal Revenue Code. The federal government has recognized most nonprofits’ rights to engage in a limited degree of advocacy and public education – as well as carefully circumscribed activities related to elections, such as get-out-the-vote drives and candidate forums.

AFP believes that the FEC's notice of proposed rulemaking regarding the definition of "political committee" and other related changes could be extremely detrimental to America's nonprofit sector and the people it serves. Certain of the proposed rules could significantly disrupt the system charities have been using for decades to exercise their fundamental right to advocacy – to educate the public and involve them in our country's civic and democratic processes. Consequently, the adoption of these rules could dramatically reduce the ability of nonprofits to represent the people they serve and limit the information the public receives about what its government is doing.

**AFP recommends that the FEC exempt nonprofit entities organized under Section 501(c) of the Internal Revenue Code from its proposed regulations.** These types of organizations do not exist to influence elections – indeed, federal law prohibits them from doing so. The Internal Revenue Service already regulates charities in this regard, so an additional regulator with an additional set of regulations is duplicative, unnecessarily burdensome and provides no additional value or service to the public. AFP is also concerned that the FEC is attempting to regulate organizations over which it has been given no authority.

#### **I. A Regulatory Structure Is Already In Place For 501(c) Organizations.**

AFP does not see any public value or benefit in applying the proposed regulations to the 501(c) community. The IRS already has in place a long list of regulations, restrictions and guidelines regarding 501(c) organizations and their ability to advocate, educate the public and become involved in elections. In many instances, the IRS encourages these activities by producing specific guidelines and case examples of how and to what extent charities may advocate, communicate or perform election-related activities. Why, then, is another set of regulations needed? Little public good or value is derived from including 501(c) organizations in the list of entities affected by this proposed rulemaking.

In addition, current law allows certain 501(c) organizations to create affiliated organizations that can have as a primary purpose to influence elections. For example, 501(c)(4) organizations can create an affiliated 527 organization, while AFP, a 501(c)(6) association has created an affiliated political action committee. Both of those types of organizations are most assuredly in the realm of jurisdiction for the FEC and can conduct the type of activities the FEC is seeking to regulate. There are clearly two separate systems in place, one for 501(c) nonprofits under the IRS, and one for political committees (which might be affiliated with a nonprofit, but are separate and distinct entities) under the FEC. With these regulations, the FEC is trying to merge the two sectors together, which simply doesn't work and provides no clear public protections.

## **II. The FEC has no authority from the Bipartisan Campaign Reform Act to include 501(c) organizations under its proposed regulations.**

The FEC admits in the supplementary information for this notice of proposed rulemaking that the “proposed rule does not expressly mention other tax-exempt organizations, such as those organized under section 501(c) of the Internal Revenue Code....” Also in the notice of proposed rulemaking, the FEC admits that the BCRA “did not change the definition of expenditure....” Taken together, we cannot see any authority given to the FEC to include 501(c) organizations in the proposed rulemaking.

In addition, Congress had ample time to consider what sort of organizations were to be affected by the BCRA. The fact that the legislation and committee reports continue to refer to “political parties” clearly suggests that nonprofit organizations under Section 501(c) were not the intended targets of Congress.

## **III. The proposed FEC regulations contradict the very foundation of the United State’s nonprofit sector and the traditions, premises and assumptions under which it operates.**

AFP is most concerned that the proposed regulations undermine the very principles upon which the nonprofit sector is based. For example, the proposed regulations may seek to impose a definition of “political committee” whereby a tax-exempt organization that has as its primary purpose to influence elections would become a political committee. But by their very definition and federal law, nonprofits cannot have as their primary purpose, or even one of their primary purposes, to influence elections.

Once a nonprofit’s primary purpose becomes to influence elections, it loses its tax-exempt nonprofit status. Again, this is precisely why certain nonprofits create affiliated organizations (such as 527 organizations or political action committees) which can have as their primary purpose to influence elections). Applying the definition of political committee to a charity simply makes no sense in the nonprofit context.

The broad language used in either proposed definition of “expenditure” is even worse, as they would make most nonprofit communications about public policy matters nearly impossible. To count as an expenditure for purposes of determining whether or not the nonprofit is a political committee, the communication has to “promote, support, attack or oppose” a federal candidate for office. However, the meaning of “promote, support, attack or oppose” is not defined, so there is no way to determine what this phrase might mean. In addition, it seems clear from the regulations that the communication does not have to refer to an election or political campaign, just simply mention the candidate’s name.

Most nonprofits refer to federal candidates in their communications to donors, supporters and members of the public about public policy issues. They encourage individuals to thank a particular Senator for his/her vote on an issue, or oppose the Representative's amendment to a bill. They might honor a federal candidate for his or her work and support on an issue. These types of communications – the lifeblood of any nonprofit's grassroots advocacy work and one of the most critical activities a nonprofit does in pursuing its mission – could now jeopardize the organization's tax-exempt status.

## **Conclusion**

The proposals promulgated by the FEC may be appropriate for political committees, but not for 501(c) organizations. The language of the notice of proposed rulemaking, as it may relate to 501(c) organizations is unnecessary and invasive of the existing regulatory scheme developed by Congress, the FEC, and the IRS. AFP is also concerned that the FEC does not have the statutory authority to apply the proposed regulations to 501(c) organizations in the first place.

For all of these reasons, 501(c) organizations should be exempt from the proposed FEC regulations regarding the definition of "political committee," "expenditures" and other proposed changes encompassed in Notice 2004-6.

We look forward to working with the Commission to craft a regulatory plan under the BCRA which is protective of the public interest and narrowly crafted to avoid imposing unnecessary burdens and limits on the nonprofit sector. Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Paulette V. Maehara". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Paulette V. Maehara  
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